

2003

# State of Utah v. Kyle Kent Stringham : Brief of Appellant

Utah Court of Appeals

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Julie George; Attorney for Appellant.

Mark L. Shurtleff; Laura Dupaix; Utah Attorney General's Office; Attorneys for Appellee.

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## Recommended Citation

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IN THE UTAH COURT OF APPEALS

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STATE OF UTAH,

Plaintiff/Appellee,

v.

KYLE KENT STRINGHAM,

Defendant/Appellant.

**BRIEF OF APPELLANT**

APPELLANT IN CUSTODY  
PRIORITY 2

**Case # 20030316-CA**

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BRIEF OF APPELLANT

---

AN APPEAL FROM A SENTENCE IMPOSED IN THE EIGHTH JUDICIAL  
DISTRICT COURT, DUCHESNE DEPARTMENT, STATE OF UTAH, FOR  
TWO SEPARATE CASES AND JURY CONVICTIONS OF ARRANGING  
THE DISTRIBUTION OF A CONTROLLED SUBSTANCE, IN  
VIOLATION OF UTAH CODE ANN. § 58-37-8 ET. SEQ. ALL SECOND  
DEGREE FELONIES, THE HONORABLE JOHN R. ANDERSON  
PRESIDING.

JULIE GEORGE (6231)  
32 EXCHANGE PLACE, SUITE 101  
SALT LAKE CITY, UT 84111  
ATTORNEY FOR APPELLANT

MARK SHURTLEFF  
LAURA DUPAIX  
UTAH ATTORNEY GENERAL'S OFFICE  
P.O. BOX 140854  
SALT LAKE CITY, UTAH 84114-0854

ORAL ARGUMENT AND PUBLISHED OPINION NOT REQUESTED

**FILED**  
Utah Court of Appeals

DEC - 1 2003

Paulette Stagg  
Clerk of the Court

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IN THE UTAH COURT OF APPEALS

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STATE OF UTAH,

Plaintiff/Appellee,

v.

KYLE KENT STRINGHAM,

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**BRIEF OF APPELLANT**

**APPELLANT IN CUSTODY  
PRIORITY 2**

**Case # 20030316-CA**

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BRIEF OF APPELLANT

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VIOLATION OF UTAH CODE ANN. § 58-37-8 ET. SEQ. ALL SECOND  
DEGREE FELONIES, THE HONORABLE JOHN R. ANDERSON  
PRESIDING.

JULIE GEORGE (6231)  
32 EXCHANGE PLACE, SUITE 101  
SALT LAKE CITY, UT 84111  
ATTORNEY FOR APPELLANT

MARK SHURTLEFF  
LAURA DUPAIX  
UTAH ATTORNEY GENERAL'S OFFICE  
P.O. BOX 140854  
SALT LAKE CITY, UTAH 84114-0854

ORAL ARGUMENT AND **PUBLISHED** OPINION NOT REQUESTED

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IN THE UTAH COURT OF APPEALS	
STATE OF UTAH,  Plaintiff/Appellee,  v.  KYLE KENT STRINGHAM,  Defendant/Appellant.	<b>BRIEF OF APPELLANT</b>  PRIORITY 2  <b>Case # 20030316-CA</b>

---

BRIEF OF APPELLANT

---

JURISDICTION AND NATURE OF PROCEEDINGS

This is an appeal from a Final Judgement and Commitment in the Eighth Judicial District Court, Duchesne Division, for two separate convictions by way of jury trials and subsequent sentence by the Honorable Judge John R. Anderson on March 18, 2003.

Trial counsel had filed a Motion to Dismiss the case on September 18, 2002 which alleged that based on the conviction of the defendant in the first case that no subsequent prosecutions should be allowed based on double jeopardy. The trial court denied the motion on November 1, 2002 (Trial Court Record, 49-55 & 89-91). Once the motion had been denied the two subsequent cases proceeded to jury trials.

The charges in these cases are one count in each case of Arranging to Distribute a Controlled Substance in violation of Utah Code Ann. § 58-37-8 (1953 as amended) and the jury convicted Mr. Stringham of each count in separate jury trials. Appellate counsel made a motion to consolidate the two cases for appeal and files this brief.

This Court obtains jurisdiction to review the appeal pursuant to Utah Code Annotated

§78-2a-3(2) and Rule 4 of the Utah Rules of Appellate Procedure.

The appeal is timely filed in that the sentence in each case was filed in the form of a final Judgment and Commitment on March 18, 2003 and the Notice of Appeal for each case was filed on March 24, 2003.

STATEMENT OF ISSUE PRESENTED ON APPEAL  
AND STANDARD OF APPELLATE REVIEW

There is one issue for review:

The trial court erred in failing to grant the Motion to Dismiss based on double jeopardy in that the criminal acts that formed the basis of each separate case, 021800059 and 021800063, arose as one single criminal episode with the first case and therefore should have been prosecuted as one case. As they were not, Mr. Stringham asks this Court to vacate the conviction in case 021800063.

STANDARD OF REVIEW

The Standard of Review for a case such as this where the defendant alleges the trial court erred when it failed to properly interpret Utah Code in relation to the Single Criminal Episode argument is a question of law and should be reviewed by this Court for correctness. Provo City v. Cannon, 992 P.2d 206 (1999).

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

Any relevant text of constitutions, statutory provisions, or rules referenced in this brief and pertinent to the issues now before the court on appeal are contained herein or attached to this brief.

STATEMENT OF THE CASE

In the case currently before this Court for review, the Informations were filed against Mr.

Stringham on April 19, 2002, alleging one count in each case, 021800059 & 021800063, of Distribution or Arranging to Distribute a Controlled Substance, Methamphetamine, in violation of Utah Code Annotated, §58-37-8(1)(a)(iii)(1953 as amended) (Trial Record Case No. 021800059 R.2 & 3 and 021800063 R. 1 & 2).

The Affidavits of Probable Cause to support the arrest warrant were identical in each case and identical to the first case in 011800120 (R.4-7 & 5-8 respectively). Preliminary hearings on the two cases were combined and held on August 5, 2002 and Mr. Stringham was bound over on each case but the cases were not combined (R.44 & 41 respectively) with each case being set for separate jury trials.

On September 18, 2002 trial counsel filed a Motion to Dismiss the Informations alleging that in both new cases, or in the very least, in case 021800059 all the criminal conduct alleged was previously adjudicated either in case 011800120 or in 021800063 (R.49 & 47). The State filed a Motion in Opposition to the request for dismissal on October 9, 2002 (R.56 & 58). Oral argument was held on October 28, 2002 and the trial court issued a ruling denying the Motion to Dismiss on November 1, 2002 (R. 89 & 78). However, the trial court did not address if 059 should be dismissed based upon the double jeopardy argument relating to case 120 or 063 or both—he simply denied the motion and never addressed it again, even after the trial in 063.

Separate jury trials occurred on November 19, 2002 for case 063 and November 21, 2002 for case 059 and Mr. Stringham was convicted of the charge in each case (R.133 & 128). Mr. Stringham was sentenced to one to fifteen years in prison in each case to run concurrent with each other but consecutive to case 011800120 and consecutive to the sentence Mr. Stringham had been sentenced to serve prior to the 2001 case (R.151 & 137). The Judgement and Commitments



modified for technical purposes only and issued on March 18, 2003 and the Notice of Appeal in each case was filed on March 24, 2003.

Appellate counsel was appointed and counsel made a motion to consolidate case 021800059 and 021800063 on appeal. That motion was granted and briefing schedules were set. Appellate counsel filed motions to continue and this brief is timely filed on Monday December 1, 2003.

### STATEMENT OF THE FACTS

The following facts were stipulated to by the State and the defense in the memorandums in support of and in opposition to the Dismissal of the Information . During November 7, 2001 Susie Springer was a paid confidential informant for the State. Ms. Springer informed the police that she could buy methamphetamine from Carol Catoor. Springer met with Catoor in Neola Utah at Catoor's home and purchased methamphetamine from Mr. Stringham who was at the residence (R.49-55 & 47-53).

After the purchase Springer met with the police to turn over the drugs and she informed the police that Mr. Stringham had additional drugs to sell. She went back to the home of Catoor in Neola and made a second purchase of drugs from Mr. Stringham (R.49-55 & 47-53). After the second purchase Springer told the police she knew Mr. Stringham still had drugs for sale.

After Mr. Stringham had engaged in the two sales of cocaine to Ms. Springer, he went into town and was standing talking to a friend when he was approached by his parole officer. Seeing the parole officer approach, Mr. Stringham handed a tin of individually wrapped cocaine to his friend William Samples to hold . Even though Mr. Stringham had given Mr. Samples one tin container of drugs to hide from the parole officer, he kept one tin container of drugs on his

person. It was the possession of the one tin of drugs and the transfer of the other tin to William Samples which formed the basis of the charges in a case addressed by this Court earlier this year (2002591-CA) and that conviction was upheld<sup>1</sup>.

It was after Mr. Stringham pled guilty to his actions regarding Mr. Samples that he discovered that the state was filing charges on the sale of methamphetamine to Springer. Each sale was filed as a separate criminal case with Mr. Stringham being arraigned first on the higher case number 021800063. Mr. Stringham then tried to withdraw his guilty plea in the first case (011800120) which was denied and the conviction was upheld by this Court in State v. Stringham 2002591, 2003.

Mr. Stringham then took the second and third cases that arose from the sale of methamphetamine to Springer to separate jury trials when the trial Court denied his motion dismiss. After the jury convicted Mr. Stringham of the sale of methamphetamine to Springer in case 021800063, he went to trial on the third and final case, 021800059, and was convicted of that charge (R133 & 128).

#### SUMMARY OF ARGUMENT

Mr. Stringham asserts that the trial court erred when it failed to dismiss cases 021800059 and/or 021800063 based on the provisions of double jeopardy as both the second and third case which charged his illegal conduct on November 7, 2001 arose from a single criminal episode. Although the trial court erroneously failed to dismiss both of the subsequent cases when the trial attorney filed the motion originally, it should have dismissed case 021800059 at the time the trial as the jury convicted Mr. Stringham of the distribution count in case 021800063. Its failure to do

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<sup>1</sup>These facts regarding case 2002591-CA are provided for clarification purposes only.

so when the motion was first raised was a violation of Utah statute. The trial court's failure to do so after the jury verdict on case 021800063 was plain error.

### ARGUMENT

THE COURT COMMITTED ERROR WHEN IT FAILED TO DISMISS CASE 021800059 ON THE BASIS THAT THE CRIMINAL CONDUCT CHARGED IN THE CASE WAS PART OF A SINGLE CRIMINAL EPISODE WITH CASE 021800063 AND WAS THEREFORE BARRED BY DOUBLE JEOPARDY.

Under Utah Code Annotated, §76-1-403 (1953 as amended), provides that if a defendant that has been prosecuted for one or more offenses arising out of a single criminal episode, a subsequent prosecution for the same or a different offense arising out of the same criminal episode is barred if: (a) the subsequent prosecution is for an offense that was or should have been tried under subsection 76-1-402(2) in the former prosecution; and (b) the former prosecution: (ii) resulted in conviction.

Section 402(2) provides: Whenever conduct may establish separate offenses under a single criminal episode unless the court otherwise orders to promote justice, a defendant shall not be subject to separate trials for multiple offenses when: (a) the offenses are within the jurisdiction of a single court; and (b) the offenses are known to the prosecuting attorney at the time the defendant is arraigned on the first information or indictment.

A "single criminal episode" is defined by Utah Code §76-1-401 as all conduct which is closely related in time and is incident to an attempt or an accomplishment of a single criminal objective.

Mr. Stringham asserts that he sold narcotics to Ms. Springer two times in the same day and was then arrested later that day based on statements to law enforcement that he still had drugs in his possession. The facts that show that establish that all of Mr. Stringham's conduct is the

same criminal episode is as follows; 1) the same police informant (Springer) was used for both drug buys in the morning and afternoon. Springer was also the informant that told the police that Stringham still had drugs in his possession for basis of his arrest at the end of the day, 2) the same person facilitated the buys in the morning and the afternoon (Catoor), 3) the same house was used for the drug buy in the morning and in the afternoon—it was also where Springer saw that Mr. Stringham still had drugs in possession to form the basis of his arrest at the end of the day, 4) the same drug, methamphetamine, was sold on both occasions, and finally, 5) all three crimes were committed in the same county and within short time period of each other. Even the affidavits of probable cause to support the arrest and Information were identical in both cases 021800059 and 021800063.

Mr. Stringham asserts that the trial court should have granted his Motion to Dismiss and dismissed cases 021800059 and 021800063 on the basis that he was convicted and sentenced in case 011800120 and therefore based on the provisions of Utah law the doctrine of single criminal episode applied and any further convictions were barred by double jeopardy.

On appeal, counsel asserts that even if the trial court was proper in failing to grant the Motion to Dismiss on both cases 021800059 and 021800063- it was Plain Error for the trial court not to dismiss case 021800059 after the jury convicted Mr. Stringham in case 021800063. Essentially, on appeal it is asserted that even if this Court finds that the trial court properly found that the possession of methamphetamine and cocaine later in the day—and the act of trying to conceal the drugs by passing them to Mr. Samples constituted a separate case—there is no way the two drug sales earlier in the day can be properly filed as two separate criminal cases. For this

reason it was plain error for the trial court not to dismiss case 021800059 after the jury convicted Mr. Stringham in 021800063.

Mr. Stringham asserts that the State will try to argue that the Motion to Dismiss was seeking to dismiss both 059 and 063 on the basis of the earlier conviction in 120 and therefore, the trial attorney did not renew the motion to dismiss (and therefore preserve the argument for appeal) as to case 059 after the conviction in 063. However, counsel on appeal asserts that the original Motion to Dismiss listed first the request to dismiss both subsequent cases and in the alternative a request to dismiss only 059 based on the filing of 063. In the event that this Court finds that the trial attorney did not preserve the Motion to Dismiss properly in the trial court, counsel asserts that this Court should still address the issue based on plain error.

This Court may address an issue if it was not raised below by counsel under the Plain Error standard. "To succeed on a claim of plain error, a defendant has the burden of showing '(I) [a]n error exists; (ii) the error should have been obvious to the trial court; and (iii) the error is harmful.'" . quoting State v. Dunn, 850 P.2d 1201, 1208 (Utah 1993).

Here, if this Court finds that Mr. Stringham only preserved his argument that both 059 and 063 should be dismissed based on the conviction of 120– then it can address if 059 should be dismissed on the basis of the conviction in 063 as such an error exists under Utah law governing single criminal episodes and the error was obvious to the trial court. The trial court had to have known that multiple cases were being filed against Mr. Stringham based on the activities in one day. The trial court received the Motion to Dismiss, it recited the facts surrounding the conduct of Mr. Stringham that whole day and it addressed all three cases that arose from the actions that day.

The trial court received a memo in opposition to the motion and held oral argument in the matter. The fact that the trial Court's ruling denying the motion only addressed the issue in the context of dismissing both cases 059 and 063 after the conviction in case 120—does not negate the fact that the trial court was put on notice that both 059 and 063 dealt with the very same acts.

The trial court was clearly on notice of all three cases and that they all stemmed from drug dealing activity in one day. Additionally he was on notice that trial counsel was asserting that Mr. Stringham was being unfairly bombarded with multiple criminal convictions that addressed a single criminal episode.

Therefore, even if the trial court properly ruled that 059 and 063 should proceed and were not barred based on the conviction in 120—the trial court clearly should have dismissed case 059 after the jury returned its verdict of guilty in case 063.

The error was obvious to the trial court and the trial court was on notice that the issue was one of contention in the three cases. Finally, Mr. Stringham was prejudiced by the trial court's failure to raise the issue and address the claim of double jeopardy. Had the trial court raised the issue Mr. Stringham would not have had to go through the second jury trial. Even though the sentences were run concurrent to each other—they were all run consecutive to case 120 and to the first case Mr. Stringham was serving at the prison. Mr. Stringham will do several more months, if not years, even with a concurrent sentence on case 063 due to the prior convictions. Any prison time, no matter how minimal is still very prejudicial to Mr. Stringham.

For these reasons Mr. Stringham respectfully asks this Court to address the issue of whether or not case 021800059 should have been dismissed based on the jury conviction in case 021800063. He asserts there is clearly an error and the error should have been obvious to the

trial court. Finally, the error is harmful—without it Mr. Stringham would not stand convicted of the crime in case 021800059

In support of his claim that case 059 is identical to case 063 Mr. Stringham asserts that his acts of selling drugs to Susie Springer on November 7, 2001 were one criminal objective. There was one criminal intention—to sell drugs to Springer, one general impulse—to deal drugs from Catoor’s house; one plan—to deal methamphetamine. Even if there was more than one act or a series of acts or transactions there was one offense—dealing methamphetamine to Susie Springer. See State v. Crosby, 927 P.2d 638 (Utah 1996) (If there is one intention, on general impulse and one plan even though there might be a series of transactions, there is only one offense).

Although it is possible the trial court was correct in ruling that the act of leaving Catoor’s house and going to find his friend William Samples ended the single criminal episode—and therefore the act of possessing methamphetamine and cocaine and trying to conceal the drugs by handing them to Samples—was a separate and distinct crime; there is no way the trial court could properly separate the two acts of drug dealing to Springer earlier in the day.

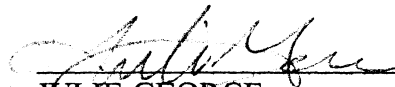
All of the conduct earlier in the day was closely related in time and is incident to an attempt or an accomplishment of a single criminal objective. See Utah Code §76-1-401 cited above. “If multiple offenses meet the definition of a single criminal episode, the applicable charges must “be filed in a single court that has jurisdiction of the charged offense with the highest possible penalty of all the offenses charged...[and]may not be separated except by order of the court and for good cause shown.” Utah R. Crim. P. 9.5(1)(a), as cited in State v. Strader, 902 P.2d 638 (Ut. App. 1995); see also State v. Keppler, 976 P.2d 99 (Utah Ct. App. 1999).

Mr. Stringham asserts that pursuant to §76-1-401, 402 and 403 and in accordance with Utah Rules of Criminal Procedure 9.5, his separate acts of selling drugs to Susie Springer constituted one single criminal episode on November 7, 2001. Therefore, after he was convicted by way of a jury trial in case 021800063, the trial court committed plain error by not dismissing case 021800059 for violating the provisions of double jeopardy.

### CONCLUSION

Mr. Stringham respectfully requests this Court to vacate his conviction in case 021800059 for one count of Arranging to Distribute a Controlled Substance on the basis that the jury conviction in case 021800063 clearly prevents, pursuant to double jeopardy protections, separate convictions for conduct constituting a single criminal episode.

RESPECTFULLY SUBMITTED this 1<sup>st</sup> day of December 2003.

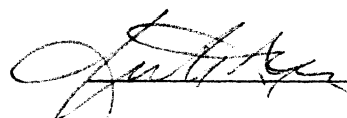
  
\_\_\_\_\_  
JULIE GEORGE  
Attorney for Kyle Stringham, Appellant

### MAILING CERTIFICATE

I hereby certify that I hand-delivered or mailed, first class postage prepaid, a true and correct copy of the foregoing Brief to:

LAURA DUPAIX  
ASSISTANT UTAH ATTORNEY GENERAL  
CRIMINAL APPEALS DIVISION  
P.O. BOX 140854  
SALT LAKE CITY, UTAH 84114-0854

DATED THIS 1<sup>st</sup> DAY OF December 2003.

  
\_\_\_\_\_



## **ADDENDA**

## **ADDENDUM A**

JOEL D. BERRETT #0307  
Attorney for Defendant  
P.O. Box 262  
Roosevelt, Utah 84066  
(435) 722-3606

FILED  
DISTRICT COURT  
DUCHESNE COUNTY, UTAH

MAR 25 2003

JOANNE MCKEE, CLERK  
BY                      DEPUTY

IN THE EIGHTH JUDICIAL DISTRICT COURT DUCHESNE COURT  
DUCHESNE COUNTY, STATE OF UTAH

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STATE OF UTAH,	:	AMENDED
	:	NOTICE OF APPEAL
Plaintiff and Appellee,	:	
vs.	:	
KYLE KENT STRINGHAM,	:	Case No. 021800059
Defendant and Appellant.	:	Judge: JOHN R. ANDERSON

---

NOTICE IS hereby given that Kyle Kent Stingham, defendant/appellant through counsel, Joel D. Berrett, appeals to the Utah Supreme Court, the Final Judgment of the Honorable John R. Anderson entered in this matter on March 17, 2003.

The appeal is taken from the entire Judgment.

Respectfully submitted and dated this 24 day of

March, 2003.

STATE OF UTAH }  
County of Duchesne } ss.

I, Joanne McKee, Clerk of the District Court, do hereby certify that the above and foregoing is a full, true and correct copy of the original document which is on file in my office.

Witness my hand and seal of said Court above mentioned, this 31<sup>st</sup> day of March, A.D. 2003

JOANNE MCKEE

*Joanne McKee*

*Joel Berrett*  
JOEL D. BERRETT  
Attorney for Defendant/Appellant

**CERTIFICATE OF MAILING**

I do hereby certify that on this 24 day of March, 2003, I mailed, postage prepaid, a true and correct copy of the foregoing Amended Notice of Appeal to:

Cleve J. Hatch  
Duchesne County Attorney  
P.O. Box 206  
Duchesne, Utah 84021

by depositing same in the United States Post Office, Roosevelt, Utah.

Karela Berrett  
Secretary

## **ADDENDUM B**

JOEL D. BERRETT #0307  
Attorney for Defendant  
P.O. Box 262  
Roosevelt, Utah 84066  
(435) 722-3606

FILED  
DISTRICT COURT  
DUCHESNE COUNTY UTAH

MAR 25 2003

JOANNE MCKEE, CLERK  
BY me DEPUTY

IN THE EIGHTH JUDICIAL DISTRICT COURT DUCHESNE COURT  
DUCHESNE COUNTY, STATE OF UTAH

STATE OF UTAH, : AMENDED  
Plaintiff and Appellee, : NOTICE OF APPEAL  
vs. :  
KYLE KENT STRINGHAM, : Case No. 021800063  
Defendant and Appellant. : Judge: JOHN R. ANDERSON

NOTICE IS hereby given that Kyle Kent Stingham,  
defendant/appellant through counsel, Joel D. Berrett, appeals to  
the Utah Supreme Court, the Final Judgment of the Honorable John R.  
Anderson entered in this matter on March 17, 2003.

The appeal is taken from the entire Judgment.

Respectfully submitted and dated this 24 day of

March, 2003.

STATE OF UTAH }  
County of Duchesne } ss.

I, Joanne McKee, Clerk of the District Court, do  
hereby certify that the above and foregoing is a  
true and correct copy of the original document  
which is on file in my office.

In witness whereof I hereunto set my hand and seal  
of said Court above mentioned, this 31st  
day of March A.D. 2003

JOANNE MCKEE

By Pat Mullins Deputy <sup>1</sup>

Joel Berrett  
JOEL D. BERRETT  
Attorney for Defendant/Appellant

CERTIFICATE OF MAILING

I do hereby certify that on this 24 day of March, 2003, I mailed, postage prepaid, a true and correct copy of the foregoing Amended Notice of Appeal to:

Cleve J. Hatch  
Duchesne County Attorney  
P.O. Box 206  
Duchesne, Utah 84021

by depositing same in the United States Post Office, Roosevelt, Utah.

Karela Berrett  
Secretary


## ADDENDUM C



CLEVE HATCH #5609  
DUCHESNE COUNTY ATTORNEY  
Attorney for Plaintiff  
P.O. Box 206  
Duchesne, Utah 84021  
(435) 738-0184

FILED  
DISTRICT COURT  
DUCHESNE COUNTY, UTAH

MAR 18 2003

JOANNE McKEE, CLERK  
BY  DEPUTY

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF UTAH  
DUCHESNE COUNTY, DUCHESNE DEPARTMENT

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STATE OF UTAH,	:	JUDGMENT AND
	:	COMMITMENT ORDER
Plaintiff,	:	
vs.	:	
	:	Criminal No. 021800059
KYLE KENT STRINGHAM,	:	Criminal No. 021800063
Defendant.	:	Judge John R. Anderson

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Criminal No. 021800059

**DISTRIBUTION OF OR ARRANGING TO DISTRIBUTE A CONTROLLED  
SUBSTANCE, WITH A PRIOR CONVICTION (METHAMPHETAMINE) - A FIRST  
DEGREE FELONY**

Criminal No. 021800063

**DISTRIBUTION OF OR ARRANGING TO DISTRIBUTE A CONTROLLED  
SUBSTANCE, WITH A PRIOR CONVICTION (COCAINE) - A FIRST DEGREE  
FELONY**

The above-entitled case came before the Court for Sentencing on Monday, January 6, 2003, and again for amendment of the sentence on Tuesday, February 18, 2003, the Honorable Judge John R. Anderson, presiding. The defendant was present and was represented by his attorney, Joel D. Berrett. The State of Utah was represented by David K. Cunningham, Deputy Duchesne County Attorney on January 6, 2003, and by Cleve Hatch, Duchesne County Attorney on February 18, 2003. The Court had received and reviewed the Pre-Sentence Investigation Report prepared by Adult Probation and Parole. Statements were made by counsel for the

parties.

NOW THEREFORE, based upon the file and record herein, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

That the defendant has been convicted by a Jury of the offenses of **Distribution of or Arranging to Distribute a Controlled Substance, With a Prior Conviction (Methamphetamine), a First Degree Felony**, in violation of Section 58-37-8 UCA (1953) as amended, in Criminal No. 021800059; and **Distribution of or Arranging to Distribute a Controlled Substance, With a Prior Conviction (Cocaine), a First Degree Felony**, in violation of Section 58-37-8 UCA (1953) as amended, in Criminal No. 021800063.

That for the offense of **Distribution of or Arranging to Distribute a Controlled Substance, With a Prior Conviction (Methamphetamine), a First Degree Felony**, in Criminal No. 021800059, it is hereby ordered that the defendant is sentenced to serve an indeterminate term of not less than five (5) years and could be for life in the Utah State Prison. That for the offense of **Distribution of or Arranging to Distribute a Controlled Substance, With a Prior Conviction (Cocaine), a First Degree Felony**, in Criminal No. 021800063, it is hereby ordered that the defendant is sentenced to serve an indeterminate term of not less than five (5) years and could be for life in the Utah State Prison. Said prison sentences shall run concurrent with each other, but consecutive to the sentence the defendant is currently serving at the Utah State Prison. The Court recommends to the Board of Pardons that the defendant be given credit for time served, and that the Board consider an early release date if the defendant is serious about his drug problem.

It is further ordered that the money seized from the defendant at the time of his arrest, in the amount of \$1,159, be forfeited as restitution to the Uintah Basin Narcotics Strike Force in the

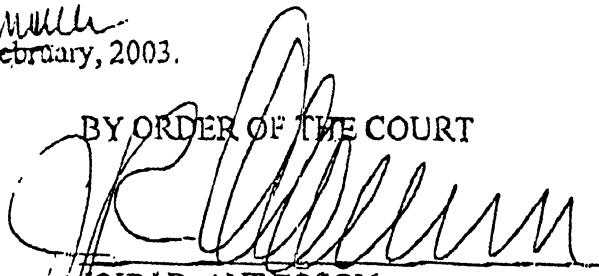
sum of \$475, and the remainder, in the sum of \$634, be forfeited as recoupment fees to Duchesne County for his indigent counsel expenses.

Commitment shall commence forthwith.


The defendant is remanded to the Duchesne County Sheriff to be transported to the Utah State Prison. Thereafter, the defendant is remanded to the custody of the Board of Pardons.

DATED this 17 day of <sup>March</sup>~~February~~, 2003.

BY ORDER OF THE COURT

  
JOHN R. ANDERSON  
DISTRICT COURT JUDGE

Approved as to form:

  
Joel D. Berrett  
Attorney for Defendant

CERTIFICATE OF MAILING

I hereby certify that on the 25<sup>th</sup> day of February, 2003, I mailed a true and correct copy of the foregoing proposed Judgment and Commitment Order to the attorney for the defendant, at:

Joel D. Berrett  
Attorney at Law  
PO Box 262  
Roosevelt UT 84066

by depositing in the U.S. Mail, Duchesne, Utah.

Rebecca Mitchell  
Legal Assistant